
LEGAL DIVISION

FY2003 SIGNIFICANT ACCOMPLISHMENTS

1. Division staff accomplished all of the Division's Objectives for FY2003.
2. The Division sent approximately the same number of Preliminary Notice Letters (PNL) in FY2003 as compared to FY2002, with the Division mailing 240 PNLs as compared to 244 in FY2002, despite not being fully staffed (as described below in Significant Disappointments). The Division significantly decreased the number of days to mail PNLs after the case review date from 74 days in FY2002 to 64.5 days in FY2003.
3. The Division conducted 23.5 days of Informal Conferences in FY2003 as compared to 21.5 days in FY2002. This increase in Informal Conference days was accomplished despite not being fully staffed, and allowed the Division to resolve a large number of disciplinary cases.
4. Division staff updated sample formats for common types of Preliminary Notice Letters and Agreed Board Orders to continuously strive to improve clarity and comprehension by licensees.
5. The Division resolved four cases that were set for administrative hearing at the State Office of Administrative Hearings (SOAH) prior to proceeding to hearing. The cases were resolved through Agreed Board Orders (ABO) through negotiations with the licensees or their attorneys. These resolutions saved the agency considerable resources both in time and expenditures.
6. Three administrative hearings were conducted at SOAH. Four Proposals for Decisions (PFD) were issued by the Administrative Law Judges in favor of TSBP during FY2003, and in each case, the Board adopted a Board Order accepting the PFD.
7. TSBP entered significantly more disciplinary orders in FY2003 than in any prior fiscal year (a 17% increase over FY2002). As indicated in the following chart, 98.1% of the disciplinary cases were settled through the entry of Agreed Board Orders, which resulted in significant efficiencies, both in terms of complaint resolution time and costs.

FISCAL YEAR	NUMBER OF BOARD ORDERS (BOs)	NUMBER OF AGREED BOARD ORDERS (ABOs)	NUMBER OF DISCIPLINARY ORDERS (BOs & ABOs)	% INCREASE IN DISCIPLINARY ORDERS	% ABOs OF TOTAL ORDERS
FY99	0	108	108	—	100%
FY00	0	126	126	17%	100%
FY01	4	141	145	15%	97%
FY02	2	179	181	25%	98.9%
FY03	4	209	213	17%	98.1%
TOTAL	10	763	773	97% OVER 5 YRS.	5 YR. AVG. 98.7%

LEGAL DIVISION

FY2003 SIGNIFICANT DISAPPOINTMENTS/CONSTRAINTS

1. Lori Barta, Assistant General Counsel, was on medical leave for 12 weeks, and then worked on a significantly reduced basis for approximately another 6 months, prior to her resignation effective August 31, 2003. Therefore, the Legal Division was not fully staffed for 8 of the 12 months of the fiscal year, and essentially operated with only one attorney prosecuting disciplinary cases. This situation is not fully reflected in the statistics for FY2003, because several months usually elapse before a backlog is reflected. Therefore, the Legal Division will likely see a decline in the statistics reported for FY2004.
2. The Legal Division experienced an increased workload as a result of assuming the responsibility for clarifying open records requests. General Counsel handled these additional telephone calls to requestors to define the parameters of the requests based on referrals from the Enforcement Division.
3. The project to image Agreed Board Orders and Board Orders in order to eventually provided access to these documents to the public via the TSBP web site was not completed based primarily on budget constraints.

LEGAL DIVISION

FY2003 ANNUAL REPORT

GOAL

To prosecute violations of the laws and rules related to the practice of pharmacy. To provide adjudicative information to agency customers. To provide legal services and guidance to the Board and the agency staff relating to the regulation of the practice of pharmacy and the administration of the agency.

Objectives (New)

1. To assist the Executive Director, in cooperation with other Divisions, in:
 - A. preparing testimony, attending public hearings, reviewing legislation and providing any fiscal or technical information as required by the 78th Texas Legislature; and
 - B. reviewing all legislation introduced by the 78th Texas Legislature that has an impact on the practice of pharmacy or agency operations and monitor the progress of this legislation throughout FY2003.

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. General Counsel reviewed and offered comment on approximately 85 bills relating to pharmacy and legal issues.
 - B. General Counsel assisted Executive Director with Interim Charge on Prescription Painkillers for Senate Committee on Health and Human Services to prepare for legislative changes to address issues concerned.
 - C. General Counsel responded to requests by Legislative Council to review codification of statutes related to occupational licenses.
 - D. General Counsel assisted Executive Director at a meeting with representatives from a Senator's office on the mobile pharmacy bill.
2. To assist the Executive Director, in cooperation with other Divisions, in the agency Sunset Review Process including the preparation of the agency self-evaluation report throughout FY2003.

Status: **ACCOMPLISHED**

Comment: On June 6, 2003, the Sunset Commission sent TSBP the 21-pages of written instructions for completing the agency's Self-Evaluation Report (SER). On June 20, 2003, the Executive Director met with management staff to discuss time lines and assignments. General Counsel drafted the policy issues for the SER, which outlined the changes to the law, which had previously been approved by the Board, and assisted with the review and preparation of the final draft of the SER. The SER was submitted to the Commission by the approved due date (August 20, 2003).

3. To assist the Executive Director, in cooperation with other Divisions, in the planning for implementation of the new program to register and regulate pharmacy technicians, if the program is funded by the 78th Texas Legislature.

Status: ACCOMPLISHED

Comment: In May 2003, the 78th Texas Legislature passed the Appropriations Act, which included funding for TSBP to register and regulate pharmacy technicians. During May, June, and July 2003, Division staff attended numerous meetings with the Director and staff of the Administrative Services and Licensing Division for the purpose of discussing procedures and proposed rules to implement the pharmacy technician registration program. In July 2003, the Executive Director met with management staff on several occasions to review proposed rules and discuss procedures. On August 5-6, 2003, at a regularly scheduled business meeting, the Board reviewed the proposed rules and voted to publish the proposed rules in the *Texas Register*. Final adoption of the rules will occur in FY2004, at which time the implementation of the technician registration program will begin.

4. To assist the Executive Director, in cooperation with other Divisions, in the orientation of a new Board Member within 90 days of appointment by the Governor.

Status: ACCOMPLISHED

Comment: General Counsel assisted the Executive Director with the orientation of new public member, Juliette F. Bartlett-Pack, Ph.D., on February 28-March 1, 2003.

Objectives (Ongoing)

1. To coordinate and monitor throughout FY2003 the receipt, assignment, and resolution of all cases accepted by the Division.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

Division staff met approximately once a month to discuss the status of pending cases, to assess workload allocation, and determine the most effective strategies to complete cases in a timely and efficient manner.

Division staff maintained a database system to track the current status of all cases, which increased efficiency in monitoring cases.

TSBP entered 213 disciplinary orders in FY2003, as reflected in the chart below. This performance was a record-breaking achievement, in that it represented more disciplinary orders being entered by the Board than any prior fiscal year and a 17% increase over the number of disciplinary orders entered in FY2002.

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TOTAL ORDERS

Date of Orders	Summary Suspensions	Board Orders	Agreed Board Orders		Total Number of Orders
			Public	Confidential	
Nov. 19-20, 2002	0	2	37	19	58
Feb. 4-5, 2003	0	0	50	7	57
May 13-14, 2003	0	1	30	13	44
Aug. 5-6, 2003	0	1	44	9	54
TOTAL FY2003	0	4	161	48	213

Information regarding the 213 disciplinary cases entered in FY2003 are set forth in the following chart.

SANCTIONS IMPOSED BY THE ENTRY OF DISCIPLINARY ORDERS (FY2003)

			<i>Pharmacist</i>	<i>Pharmacy</i>	<i>Total</i>	
Licenses Removed	17	(8%)				
Revoke			13	3	16	(8%)
Retire			1	0	1	(<1%)
Suspensions	61	(29%)				
Summary Suspension			0	0	0	(n/a)
Suspension			10	1	11	(5%)
Suspension/Fine			0	0	0	(n/a)
Suspension/Probation			4	5	9	(4%)
Suspension/Probation w/Conditions			26	3	29	(14%)
Suspension/Probation/Fine			0	2	2	(<1%)
Suspension/Probation/Fine w/Conditions			3	7	10	(5%)
Restrictions	2	(1%)	2	0	2	(<1%)
Other	114	(54%)				
Fine			14	8	22	(10%)
Fine with Conditions			9	5	14	(7%)
Fine and Reprimand			1	3	4	(<1%)
Fine, Reprimand with Conditions			3	14	17	(8%)
Reprimand			12	6	18	(8%)
Reprimand with Conditions			26	13	39	(18%)
Issuance License/Regist.	10	(5%)				
Grant with Probation			0	0	0	(n/a)
Grant with Probation and Conditions			1	0	1	(<1%)
Grant with Reprimand			3	1	4	(1%)
Grant with Fine			4	0	4	(2%)
Deny			1	0	1	(<1%)
Reinstatements	4	(2%)				
Grant			0	0	0	(n/a)
Grant with Probation/Conditions			4	0	4	(2%)
Deny			0	0	0	(n/a)
Modifications	5	(2%)				
Grant			5	0	5	(2%)
Deny			0	0	0	(n/a)
TOTAL FY2003:	213	(101%)*	142	71	213	(100%)

* Due to rounding.

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FY03 Orders Entered Against Pharmacist Licenses	142	67%
FY03 Orders Entered Against Pharmacy Licenses	71	33%
FY03 Total Disciplinary Orders	213	100%

DISCIPLINARY ORDERS (FY2003) NATURE OF VIOLATIONS*

	<i>RPh</i>	<i>Phcy</i>	<i>Total</i>	<i>Total %</i>
Diversion	13	3	16	8%
Illegal Delivery (C/S)	1	1	2	
Unauthorized Dispensing	3	2	5	
Illegal Possession (C/S)	1	0	1	
Theft of Controlled Substances	6	0	6	
Obtained C/S by Fraud	2	0	2	
Convictions	21	1	22	10%
Felony	9	0	9	
Misdemeanor	5	1	6	
Deferred Adjudication	4	0	4	
Alcohol-Related	3	0	3	
Audit Discrepancies	14	15	29	14%
Drug	10	15	25	
Continuing Education	4	0	4	
Practice Deficiencies	46	43	89	42%
Dispensing Errors	24	16	40	
Dispensing Errors & No Counsel and/or No Drug Regimen Review	14	22	36	
No Counsel and/or DRR	6	4	10	
Unauthorized Substitution	1	1	2	
Dispensed Rx Drug Without Child Resistant Cap	1	0	1	
Unprofessional Conduct	39	9	48	23%
No Annual Inventory	1	1	2	
Falsified Application for Licensure	5	1	6	
Aiding and Abetting	1	2	3	
Delinquent License	1	1	2	
Closed Pharmacy Improperly	1	0	1	
Failed to Operate Pharmacy While Holding License	1	2	3	
Failed to Keep Records	1	1	2	
Operated Without PIC	0	1	1	
Probable Cause	4	0	4	
Action by Other Boards	5	0	5	
Non-Compliance with Previously Entered Order	19	0	19	
Other				
Modification	5	0	5	2%
Reinstatement	4	0	4	2%
TOTAL FY2003:	142	71	213	101%**

* Board Orders/Agreed Board Orders may contain more than one type of violation. However, for purposes of this list, only one type of violation has been identified. The identified violation was selected as the primary violation.

** Due to rounding.

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2. To review all cases referred to the Division for potential disciplinary action; and if sufficient evidence exists to warrant action, to institute disciplinary proceedings against licensees within an average of 150 days of the date of the case review, in accordance with priorities established for the Enforcement Division, throughout FY2003.

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. During FY2003, Division staff participated in 23 case and/or complaint review meetings. These meetings were held approximately twice per month with participation by the Executive Director and Legal and Enforcement Division staff.
- B. Division Staff mailed 240 Preliminary Notice Letters in FY2003, in accordance with the priorities established for the Division, as compared to FY2002, when the Division mailed 244 PNLs. The Division decreased the number of days to mail from 74 days in FY2002 to 65.4 days in FY2003 and reduced the backlog of disciplinary cases.

3. To plan and conduct a minimum of 15 days of Informal Conference sessions in FY2003 to adjudicate violators of pharmacy laws/rules.

Status: **ACCOMPLISHED**

Comment: During FY2003, the Division conducted 23.5 days of Informal Conferences for 260 licensees, as indicated in the following chart. As compared to FY2002, the number of conference days increased by two days, and the number of licensees heard at Informal Conference increased by 51 licensees.

INFORMAL CONFERENCES

Dates of Informal Conference	Number of Days	Number of Licensees	Number of Licensees Dismissed	Board Member Participant
Sept. 17-19, 2002	3	34	6	Rosemary Combs
Oct. 15-17, 2002	3	30	2	Oren Peacock, R.Ph.
Dec. 2-4, 2002	3	35	4	Rosemary Combs
Jan. 14-16, 2003	3	33	6	Kim Caldwell, R.Ph.
1st & 2nd Qtrs.	12	132	18 (14%)	
Feb. 26-27, 2003	1	9	2	Donna Rogers, R.Ph.
Mar. 17-18, 2003	1.5	22	3	Donna Rogers, R.Ph.
April 15-17, 2003	3	38	4	Mike Brimberry, R.Ph.
June 3-5, 2003	3	31	3	Doyle High, R.Ph.
July 22-24, 2003	3	28	2	Wiki Erickson and Juluette Barlett-Pack
3rd & 4th Qtrs.	11.5	128	14 (11%)	
TOTAL FY2003:	23.5	260	32 (12%)	

4. To refer disciplinary cases to the State Office of Administrative Hearings throughout FY2003, and file a complaint with SOAH within an average of 120 days of the date that the agency determines the case cannot be settled with an Agreed Board Order.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

At the onset of FY2003, four cases were ongoing at the State Office of Administrative Hearings. The Division filed formal Complaints at SOAH, within 120 days that the case failed to settle with an Agreed Board Order, for seven additional cases in FY2003.

Four cases were resolved by Agreed Board Order prior to a full contested administrative hearing being conducted at SOAH.

Three administrative hearings were conducted, which resulted in Proposals for Decisions (PFD) issued by the Administrative Law Judges in favor of TSBP, and in each case, the Board adopted a Board Order accepting the PFD. One additional PFD was issued by an Administrative Law Judge in a case for which a hearing had been conducted in FY2002. The PFD was in favor of TSBP, and the Board adopted a Board Order accepting the PFD.

The other three cases were planned for hearing in FY2004.

SOAH performed 142 hours of work for the TSBP in FY2003, totaling \$13,975.15 in direct hearings expenses and \$16,795.16 in total case expenses. These SOAH hours reflect approximately a 70% increase over FY2002.

5. To research legal issues and when necessary, to draft requests for Attorney General Opinions throughout FY2003; to serve as liaison for the Board to the Office of the Attorney General (OAG); to monitor and assist with appeals, injunctions, or civil litigation handled by the OAG against pharmacists or non-pharmacists; to provide technical assistance and maintain liaison with appropriate local, state, and federal prosecutors, legal divisions, and enforcement agencies involved in the investigation or prosecution of Board licensees, in conjunction with the Enforcement Division, throughout FY2003; and to provide legal advice regarding the administration of the agency.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

A. Liaison with the Office of Attorney General

1. Assistant Attorney General Assigned to TSBP

- (a) Division staff continued to serve as liaison with the OAG throughout FY2003. Joe Pitner served as the Assistant Attorney General assigned to TSBP from the OAG Administrative Law Division.

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- (b) General Counsel coordinated with the Chief of the Elder Law & Public Health Division of the OAG regarding referrals for medical records privacy violations.
 - (c) General Counsel researched and responded to a request by the General Counsel Division to enter into a memo of understanding with the OAG on HIPAA issues, which was not necessary since TSBP is not a covered entity.
- 2. Appeals; Injunctions; Civil Litigation
 - (a) No disciplinary cases were appealed during FY2003.
 - (b) General Counsel coordinated representation by the OAG on case against a Florida pharmacy dispensing veterinary drugs, without a valid veterinarian-client-patient relationship.
 - (c) General Counsel referred cases on importation of Canadian drugs and storefront operations facilitating such importation to the Chief of the Elder Law & Public Health.
 - (d) General Counsel coordinated OAG representation on motion to quash subpoena requesting confidential investigative information on impaired pharmacist.
 - (e) General Counsel referred a case for injunction regarding an unlicensed entity using "pharmacy" in business name.
 - (f) General Counsel requested assistance to resist subpoena regarding confidential information on an impaired pharmacist.
- 3. Requests for AG Opinions

Division staff drafted and filed 4 requests for open record decisions from the OAG; 2 requests for confidential investigative information and 2 requests for confidential rehabilitation orders on an impaired pharmacist. The OAG issued letter rulings in favor of TSBP.

B. Legal Research and Advice on Agency Administration

- 1. General Counsel reviewed the following documents for legal sufficiency and effectiveness:
 - (a) Request for Information/Bid for vendors to provide drug and alcohol screening services, and assisted with process to select new vendor and terminate services with previous vendor;
 - (b) Invitation for Bid/Contract for Peer Assistance Program;

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- (c) Confidentiality agreement for Multistate Pharmacy Jurisprudence Exam Item Writing committee;
 - (d) Agreement for Information Technology Services with Northrop Grumman;
 - (e) NAPLEX and MPJE State Letter of Agreement; and
 - (f) Interagency Cooperation Contract with Texas Board and Procurement Commission.
2. Division staff researched numerous issues, including the following issues:
- (a) Importation of prescription drugs from foreign countries;
 - (b) Reporting requirements to the OAG for delinquent debts;
 - (c) Requirements for Board member orientation prior to assuming official duties;
 - (d) Child resistant containers for dispensed prescriptions;
 - (e) Collateral attack;
 - (f) Guilty pleas and confessions;
 - (g) Honorarium payment for VIPPS inspection assistance by NABP;
 - (h) Public information response required to incarcerated individuals;
 - (i) Medical records privacy;
 - (j) Honorarium payment to Board member for committee meeting;
 - (k) Attorney work product privilege;
 - (l) Confidentiality of investigative information maintained by TSBP;
 - (m) Requirement for expiration dates on consumer prescription labels;
 - (n) Crimes of moral turpitude;
 - (o) Patient assistance programs; and
 - (p) Previous determinations by the OAG on open records decision requests.

C. Technical Assistance to Local/State/Federal Prosecutors

1. General Counsel provided information to the Louisiana Board of Pharmacy in response to a subpoena for investigative information on a pharmacist license applicant.
2. Division staff responded to requests from DEA Investigators for information on Internet pharmacy operations and on nontherapeutic prescribing and drug regimen review issues.
3. General Counsel provided information and assistance to an Assistant District Attorney in Dallas County regarding criminal action against a licensee with disciplinary action arising from the same allegations.
4. General Counsel provided information to an attorney for the Kansas Board of Pharmacy for use in a disciplinary action.
5. General Counsel coordinated with an Assistant U.S. Attorney regarding disciplinary action and corresponding felony convictions on pharmacist and pharmacy licensees.
6. General Counsel assisted the Hawaii Board of Pharmacy and the New Hampshire Attorney General with disciplinary action against a pharmacy dispensing veterinary drugs over the Internet.

6. To review and monitor the *Texas Register* for Attorney General opinions.

Status: ACCOMPLISHED

Comment: Division Staff reviewed new opinions of the Office of the Attorney General and the Texas Ethics Commission for applicability to TSBP on a weekly basis, and disseminated any relevant material to appropriate agency personnel.

7. To assist with open records requests throughout FY2003, in accordance with the procedures set forth in the Texas Public Information Act.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Division staff was responsible for answering all telephonic open records requests on licensees subject to disciplinary action. Division staff responded to approximately 130 verbal requests for complaint and disciplinary information in FY2003.
- B. General Counsel reviewed numerous written responses to open records requests, prepared by the Enforcement Division, for legal compliance with the Public Information Act in FY2003. In addition, Division staff assumed the responsibility of clarifying all open records requests requiring telephonic clarification, which resulted in a considerable increase in the workload on open records issues.

- C. Division staff prepared four requests for open records decisions from the OAG, in regard to requests for information seeking documents considered to be confidential, i.e., investigative information and rehabilitation orders. The OAG issued letter rulings in favor of TSBP.
8. To provide verbal and written information to Board staff and customers, including responses to surveys and questionnaires, as needed and required throughout FY2003.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. Surveys/Questionnaires and Other Correspondence
 - 1. General Counsel responded to Sunset Advisory Commission staff request for input on recommendations made by Sunset in regard to the State Office of Administrative Hearings.
 - 2. Division staff participated in a survey for the Department of Information Resources on network security.
 - 3. General Counsel completed the Customer Satisfaction Survey for the State Law Library and the State Office of Administrative Hearings.
- B. Technical Assistance to Board Members and Board Staff
 - 1. Division staff assisted Board Members and staff by conducting legal research on several issues (see Ongoing Objective #5).
 - 2. Division staff drafted numerous subpoenas to assist with the investigative work of TSBP investigators.
 - 3. General Counsel provided legal advice and consultation on numerous personnel issues during FY2003, including:
 - (a) prepared documents and provided legal advice regarding termination of employee;
 - (b) provided information on terminated employee to Texas Workforce Commission;
 - (c) handled issues with pharmacist interns working at TSBP;
 - (d) assisted with disciplinary actions for violations of employment policies and procedures;
 - (e) researched and assisted with implementation of TSBP Wellness Committee; and
 - (f) provided advice on retention bonus contracts.

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4. General Counsel assisted the Division of Professional Services in the review/drafting of proposed rules and preambles for rules, and the review of rule submissions to the *Texas Register* for all rules either proposed or adopted during FY2003, including rules on pharmacy technicians, library requirements, continuing education requirements, Internet prescribing, professional judgment for pharmacists at Class E pharmacies, and central prescription drug/medication order processing.
5. Division staff drafted rules for implementing provisions of the Occupations Code Ch. 53 regarding handling of criminal convictions, for default proceedings conducted at Informal Conference, and for the requirement that pharmacists check in controlled substances.
6. General Counsel continued to serve as the agency's Ethics Advisor and continued to assist Board Members and staff with legal and ethical issues.
7. Division staff handled numerous legal questions from all staff regarding a myriad of issues.
8. General Counsel reviewed complaint files to verify accuracy of information and citations in warning letters drafted by Enforcement Division staff regarding violations of federal and state law.
9. Division staff made presentations at all Board meetings held in FY2003. Presentations included information about proposed Agreed Board Orders and proposed Board Orders following a SOAH proceeding, in addition to other issues as required.
10. General Counsel assisted in the review and preparation of minutes of four regularly scheduled Board meetings.
11. Division staff assisted the Licensing Division with respect to eligibility for licensure and internship (from individuals who checked "yes" on the attestation questions on the TSBP application) by either verifying accuracy of warning letters or by handling the cases through the legal process.
12. Division staff informed the Director of Enforcement of disciplinary actions to be taken by the Board prior to entry of the orders, to ensure the correct information is immediately available on the computer system.
13. Division staff participated on a committee to develop articles for the TSBP Newsletter and served as editor for the newsletter published in August 2003.
14. General Counsel assisted the Director of Enforcement with response to House Committee on Public Health regarding procedures for intake and resolution of complaints.

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15. Division staff participated in the Agency Change Team, which met on several occasions to formulate suggestions for improvements based on the results of the Survey for Organization Excellence.
16. General Counsel met with Compliance Officers to answer questions about procedures used for warning notices, referrals to the Legal Division, and issues concerning patient assistance programs, and advised Compliance Officers regarding questions that arose during compliance inspections.
17. Division staff assisted the Licensing Division with development of procedures for registration of pharmacy technicians in compliance with the Pharmacy Act and Board rules.

C. Technical Assistance to Other Agencies and Organizations

1. General Counsel provided information to the Director of Programs, Travis County Sheriff's Department, regarding proposed program for importation of drugs from Mexico to reduce prescription medication costs for inmates.
2. Division staff gave the following presentations during FY2003:
 - (a) Division staff coached a University of Texas mock trial team in preparation for mock trial competition.
 - (b) Division staff served as judges in mock trial competitions.
 - (c) Division staff presented information on TSBP's role in addiction at the "Alcohol, Drugs, and You" seminar at the University of Houston College of Pharmacy on February 10, 2003.
3. Division staff provided information to the Medicaid program regarding disciplinary actions taken against pharmacy licenses.
4. Division staff attended State Agency Council meetings during FY2003.
5. Division staff answered numerous questions from licensees, attorneys, pharmacy schools, and other members of the public regarding legal issues, including:
 - (a) scope of definition of practice of pharmacy;
 - (b) licensing eligibility;
 - (c) effect of deferred adjudication and/or probation for various crimes on intern registration and pharmacist licensure;
 - (d) availability of investigative information;
 - (e) lack of confidentiality of licensee information;

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- (f) Internet pharmacy practices;
 - (g) change of pharmacy ownership; and
 - (h) theft and loss reporting.
 - 6. General Counsel responded to numerous requests for information from television and newspaper reporters on issues including Internet pharmacies, disciplinary actions taken by TSBP, drug diversion and counterfeit drugs, and importation of Canadian drugs.
 - 7. General Counsel assisted the Oregon Board of Pharmacy with questions on implementation of a law enforcement database system for background checks.
 - 8. General Counsel provided information to the Texas State Board of Medical Examiners regarding legality of physicians writing prescriptions to be filled by Canadian pharmacies and the prohibition against use of physician DEA registration numbers by insurance companies.
 - 9. General Counsel provided draft questions to the Texas State Board of Medical Examiners for use in developing a new Medical Jurisprudence Examination.
 - 10. Division staff participated in a telephone conference with FDA on the issue of importation of Canadian drugs.
 - 11. General Counsel responded to request for information from Texas State Board of Veterinary Medical Examiners on procedure for administrative penalties.
 - 12. General Counsel provided information about the online renewal system and attestation questions to Louisiana Board of Pharmacy.
9. To assist the Executive Director in developing and implementing the objectives of the Health Professions Council (HPC) pertinent to Division activities throughout FY2003.

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

- A. General Counsel served as chair of the HPC Legal Committee, which includes attorneys from other agencies. The committee met to discuss implementation of rules required by Occupations Code Ch. 53 on criminal convictions, HIPAA compliance issues, and negotiated rulemaking and ADR rules. General Counsel prepared material and conducted the meeting.

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- B. General Counsel coordinated the referral procedure for HPC agencies to refer medical records privacy violations to the OAG and presented the new procedure at a HPC meeting.
- C. General Counsel provided information to the Director of HPC regarding the status of a privacy workgroup set up by the OAG.
- D. General Counsel reviewed and modified a Memorandum of Understanding for shared participation of administrative functions of HPC agencies and an Interagency Cooperation Contract for toll-free complaint referral service provided by HPC to member agencies.

10. To maintain a staff development program by encouraging Division staff to participate in professional and interpersonal development seminars, cross training, and on-the-job training throughout FY2003.

Status: **ACCOMPLISHED**

Comment: This objective was accomplished through the following activities:

In FY2003, Division staff attended several general staff meetings and in-house training sessions. In addition, Division staff attended the following programs, seminars, and events:

Kerstin Arnold, J.D.	
9/26-27/02	Advanced Administrative Law Conference (Austin)
1/10/03	Telicon Legislative Conference
2/7-9/03	FARB Forum meeting
2/20/03	Citistreet presentation
5/21/03	EAP presentation on stress
6/6/03	Advanced Administrative Law (TCBA-Austin)
6/12/03	Stress Relief and Relaxation
6/20/03	Texas General Counsel Forum-Legislative Update and Document Retention
8/27/03	Laugh Your Way to Less Stress

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Julie Hildebrand, J.D.	
9/26-27/02	Advanced Administrative Law Conference (Austin)
11/7/02	First Aid/CPR AED Training
11/22/02	McKesson seminar
1/10/03	Telicon Legislative Conference
2/7-9/03	FARB Forum meeting
2/20/03	Citistreet presentation
2/28/03	Nuts and Bolts of Administrative Law
3/13/03	Back injury prevention
4/4/03	Bench Bar XVII – Administrative Law Section
4/21/03	ERS presentation on health insurance changes
5/16/03	Basics of Criminal Law (TCBA)
5/21/03	EAP presentation on stress
6/6/03	Advanced Administrative Law (TCBA-Austin)
6/12/03	Stress Relief and Relaxation
7/14-18/03	DEA Conference (Dallas)
8/27/03	Laugh Your Way to Less Stress

Lori Barta, J.D.	
9/26/02	Constitutional Law Course (Austin)
11/7/02	First Aid/CPR AED Training

Cheryl Sepulveda	
5/03	Building Winning Self Image “Releasing Your Inner Power” (Gateway Research Institute)
5/21/03	EAP presentation on stress
5/21/03	Program on TexaSaver
8/27/03	Laugh Your Way to Less Stress

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Georgienne Nassauer	
3/03	SORM Ergonomics class
5/21/03	EAP presentation on stress
6/12/03	Stress Relief and Relaxation
8/27/03	Laugh Your Way to Less Stress

11. To conduct periodic reviews and annual evaluations of all employees under the supervision of this Division during FY2003.

Status: **ACCOMPLISHED**

Comment: Formal performance reviews were conducted as follows:

Employee	Date of Evaluation	Evaluation By
Kerstin Arnold, J.D.	August 28, 2003	Executive Director
Julie Hildebrand, J.D.	June 24, 2003	General Counsel
Lori Barta, J.D.	N/A (resigned)	N/A
Cheryl Sepulveda	August 14, 2003	Assistant General Counsel
Georgienne Nassauer	August 4, 2003	Assistant General Counsel

Other activities related to Division personnel are listed below:

- A. General Counsel conducted team meetings approximately once a month with Division staff.
- B. Lori Barta began medical leave on January 3, 2003. Upon the completion of the 12-week leave, she worked for the agency on a part-time basis until she resigned from employment, effective August 31, 2003.
- C. The Division had a legal intern from the University of Texas School of Law who assisted with preparation for SOAH proceedings during the fall of 2002.
- D. Two undergraduate interns from the University of Texas assisted the Division in the spring of 2003 in drafting documents and reviewing legal cases.
- E. The Division had a legal intern from the University of Texas School of Law who assisted with various research projects during the summer of 2003.

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- F. General Counsel prepared and conducted orientations of all new TSBP employees and interns during FY2003 regarding the Legal Division, the legal process, ethics, and the Public Information and Open Meetings Acts.
 - G. The Division began the hiring process for a new Assistant General Counsel upon Lori Barta's resignation. This process included reviewing the job description, posting the position, developing selection criteria, and interviewing applicants. A new attorney, Stephanie Chambers, was selected to fill the position and hired, effective September 9, 2003.
12. To destroy records in accordance with the agency's record retention plan throughout FY2003; to update the Division's *Policies and Procedures Manual* as needed and submit any substantive revisions to the Executive Director for approval throughout FY2003.

Status: ACCOMPLISHED

Comment: This objective was accomplished as follows:

- A. Records Management

During FY2003, Division staff destroyed records, in accordance with the TSBP record retention schedule, including general correspondence.
 - B. Policies and Procedures

Division staff updated and maintained Disciplinary Notebooks and the corresponding Index containing all Board Orders and Agreed Board Orders.
13. To recommend policies and procedures to the Executive Director that will enhance the efficiency and effectiveness of the agency throughout FY2003.

Status: ACCOMPLISHED

Comment: This objective was accomplished through the following activities:

- A. General Counsel participated in the task force to implement pharmacy compounding.
- B. Division staff suggested a new procedure for handling routine cases, such as those cases involving dispensing errors and drug regimen reviews, along with continuing education audits, by mail to allow the licensee to sign a proposed Agreed Board Order without the necessity for an Informal Conference. The Division then designed new procedures for Informal Conferences to incorporate this recommendation and the new default procedures (see Ongoing Objective #14), and to streamline the process. Accordingly, the forms for all correspondence associated with Preliminary Notice Letters and Agreed Board Orders was updated to reflect the new procedures. Division staff made revisions to the cover letters for PNLs to make the instructions easier to comprehend.
- C. Division staff updated sample PNLs to provide for consistency in alleging violations of the Texas Pharmacy Act.

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- D. Division staff updated a summary of telephone call routing procedures to assist agency staff in determining which employee should handle particular types of calls and in routing calls.
- E. General Counsel updated attest questions on pharmacist and pharmacy license applications and renewals regarding criminal history to ensure full disclosure by applicants and licensees.
- F. Division staff prepared new physician affidavits for use by investigators in cases involving dispensing errors with patient harm to ensure all relevant information is obtained from physicians.
- G. Division staff began preparation for implementing a system to image Agreed Board Orders. This project was unfortunately not completed due to budget constraints following the legislative session.
- H. Division staff implemented a new procedure to reduce the number of courtesy copies of PNLs provided to pharmacies to reduce copying time and expense.
- I. Division staff developed a central file for tracking and logging open records decision requests from the OAG.

14. To recommend changes to the Texas Pharmacy Act and rules, which will enhance the agency's ability to protect the public health, safety, and welfare, or will improve the efficiency and effectiveness of the agency's operations, and forward the recommendations to the Executive Director throughout FY2003.

Status: ACCOMPLISHED

Comment: General Counsel or Division staff made the following recommendations to amend the Texas Pharmacy Act as follows:

- A. Add a requirement for licensure to the Texas Pharmacy Act that applicants must have United States citizenship or otherwise demonstrate ability to legally work in the United States;
- B. Add rules for handling criminal convictions of licensees as required by Occupations Code Ch. 53 (Recommendation was implemented by Board rule); and
- C. Implement rules to allow for informal disposition of contested cases through default proceedings before an Informal Conference panel, which recommends a disposition for approval by Board order (Recommendation was implemented by Board rule).

15. To prepare and submit a report on the accomplishment of Division objectives, for incorporation into the agency's *FY2002 Annual Report* to be presented to the Board by its May 2003 Board meeting.

Status: ACCOMPLISHED

Comment: The Division's first draft of the FY2002 Annual Report was submitted to the Executive Director by the due date. The final draft of the Annual Report was presented to and approved by the Board at its meeting held in May 2003.